

HB 1251-S.E - DIGEST

(AS OF HOUSE 2ND READING 3/14/05)

Provides that no person may individually, or in conjunction or cooperation with another person, solicit the execution of, process, receive, or accept an application or agreement for, a refund anticipation loan without first being licensed with the director as a facilitator.

Does not apply to a person doing business as a bank, thrift, industrial bank, savings and loan association, or credit union, under the laws of the United States or of this state.

Declares that this act shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations relating to refund anticipation loans. This act shall be given retroactive and prospective effect.

Requires that, for all refund anticipation loans, a facilitator must provide a clear disclosure statement to the borrower, prior to the borrower's completion of the application. The disclosure statement required under this subsection must be printed in a minimum of ten-point type. Further, the disclosure statement must contain the following: (1) The refund anticipation loan fee schedule; and

(2) A written statement containing the following elements:
(a) That a refund anticipation loan is a loan, and is not the borrower's actual income tax refund; (b) that the taxpayer can file an income tax return electronically without applying for a refund anticipation loan; (c) the average times according to the internal revenue service within which a taxpayer who does not obtain a refund anticipation loan can expect to receive a refund if the taxpayer's return is (1) filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer, and (2) mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer; (d) that the internal revenue service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer; (e) that the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full; (f) the estimated time within which the loan proceeds will be paid to the borrower if the loan is approved; and (g) the fee that will be charged, if any, if the borrower's loan is not approved.

Provides that a borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the facilitator to fund the refund anticipation loan.

Provides that it is unlawful for a facilitator of a refund anticipation loan to engage in any of the following activities:
(1) Misrepresent a material factor or condition of a refund anticipation loan;

(2) Fail to process the application for a refund anticipation

loan promptly after the consumer applies for the loan;

(3) Engage in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan;

(4) Arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of the loan;

(5) Impose charges, fees, or other consideration for a refund anticipation loan. This does not preclude any charge, fee, or other consideration usually imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns;

(6) Offer a refund anticipation loan that exceeds the amount of the anticipated tax refund less any refund anticipation loan fees; and

(7) Act as a facilitator unless they are authorized as an electronic return originator by the internal revenue service at the time.

Declares that any person who knowingly and willfully violates this act is guilty of a misdemeanor and shall be fined up to five hundred dollars for each offense.